Supreme Court, U.S.
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No. 09-

IN THE

Supreme Court of the United States

LONG BEACH MORTGAGE COMPANY,

Petitioner,

v.

ROBB EVANS
AS RECEIVER FOR TLC AMERICA, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, FIFTH DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The Court is being asked to decide the following issues:

1. Whether the federal receiver, Respondent, was divested of jurisdiction over the Texas property when he failed to timely file his re-appointment papers under 28 U.S.C. § 754.

2. Whether a California federal district court had subject matter jurisdiction to adjudicate a federal receiver's claim to title to property located in Texas.

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Petitioner is Long Beach Mortgage Company, a Delaware mortgage company that merged by operation of law, into Washington Mutual Bank. On September 25, 2008, Washington Mutual Bank was closed by the Office of Thrift Supervision and the Federal Deposit Insurance Corporation (FDIC) was named Receiver. Pursuant to a Purchase and Assumption Agreement between the FDIC as Receiver of Washington Mutual Bank and JP Morgan Chase Bank, National Association dated September 25, 2008, JP Morgan Chase Bank acquired assets of Washington Mutual Bank. Petitioner identifies JP Morgan Chase & Co., a publicly held company, as a parent corporation of JP Morgan Chase Bank, National Association that owns more than 10% of its stock.

Respondent is Robb Evans, a federal receiver appointed by the federal district court in California in the case of *Sec. & Exch. Comm'n v TLC Investments & Trade Co. et al, No. SACV 00-960-DOC, United States District Court, Central District of California.*

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Petitioner Long Beach Mortgage Company, respectfully petitions for a writ of certiorari to reverse the judgment of the Texas Court of Appeals for the Fifth Judicial District and the state district court final judgment in this case.

OPINIONS BELOW

The opinion of the Texas Court of Appeals for the Fifth Judicial District is reproduced in the Appendix at App. A. The state district final judgment is reproduced in the Appendix at App. B. The order from the Texas Supreme Court that denies the petition for review is reproduced in the Appendix at App. C.

JURISDICTION

The Texas court of appeals opinion was issued on March 6, 2009. App. A. The Texas Supreme Court entered its order denying petition for review on November 20, 2009. A timely motion for rehearing was denied on January 15, 2010. App. C. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. art. IV, § 1. Full Faith and Credit.

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the

Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

28 U.S.C. § 754

§ 754. Receivers of property in different districts

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title [28 USCS § 959].

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

28 U.S.C. § 1692

§ 1692. Process and orders affecting property in different districts

In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the property shall be entered of record in each of such districts.

STATEMENT

The courts below failed to require strict compliance with 28 U.S.C. § 754, a federal statute that creates intra-district *in rem* jurisdiction over property not in the federal district where a receivership proceeding is pending. When a statute creates an exception to the Local Action Doctrine recognized by this Court in *Ellenwood v. Marietta Chair Co.*, 158 U.S. 105, 107 S. Ct. 771, 771, 39 L. Ed. 913 (1895) and creates jurisdiction where none existed under prior statutory or common law, the language creating jurisdiction should be strictly construed and applied because it pertains to the fundamental power courts may exercise over persons or property.

A Federal District Court's power to exercise *in rem* jurisdiction over a piece of property in a different state is authorized in receivership proceedings by two Federal statutes, 28 U.S.C. §§ 1692 and 754. Section 754 is quite

specific about what is required of a receiver appointed by a remote federal district court, and several Federal Circuits have read into the § 754 process an amount of discretion that simply is not included in the text and is not warranted by any policy underlying the statutes; a harm requirement that is not in the text of the statute and should not attach to a fundamental jurisdictional statute.

This case also presents a situation never before directly addressed by any court: does § 754 require a temporary receiver later appointed as a permanent receiver to re-file the copies of the complaint and order of appointment within 10 days of the re-appointment as permanent receiver, in remote districts in which the property subject to litigation in a receivership is located, thus allowing a federal district court to exercise *in rem* jurisdiction over real property which it would otherwise have no power to exercise?

Petitioner seeks review of the ruling of the Texas Court of Appeals for the Fifth Judicial District left undisturbed by the Texas Supreme Court, which affirmed a Texas state district court final judgment that gave Full, Faith and Credit, U.S. CONST. art. IV, § 1, to a federal court judgment litigated in the State of California where Respondent, a federal receiver appointed under 28 U.S.C. § 754, established a constructive trust claim to real property that was located in the State of Texas.

Neither the California federal court nor the Texas Court of Appeals examined whether the "Local Action Doctrine" recognized by this Court in *Ellenwood*, 158 U.S. at 105 applied with regards to federal receivership

causes of action brought under the authority set out in 28 U.S.C. § 754. Whether Congress intended to preempt local actions brought by federal receivers is problematic in that the facial text of 28 U.S.C. § 754 indicates no such intent and *in rem* actions have traditionally been the exclusive subject matter of state courts. Federal receiver's have now obtained new rights unintended by Congress by reason of two Texas state courts not realizing that they have given up State power.

Background Facts

On July 24, 2002, Long Beach made a $400,000 Texas home equity loan to Carol and David Price who were the owners of the disputed real property located in Dallas County, Texas. David Price was a principal of TLC Investments and Trade Co., the subject of the SEC enforcement action. On July 23, 2002, Respondent filed a lis pendens in Dallas County, Texas where he referenced that he was seeking to establish an interest in the Texas property in ongoing litigation in California that had been filed in 2001: *Case No. SACV 01-819 DOC, Evans v. Garro, United States District Court, Central District of California, Southern Division at Santa Ana.* The lis pendens was recorded on July 24, 2002, the same day that the loan was funded, and the basis for the claim that was the subject of the lis pendens was the allegation that funds from TLC Investments were improperly used to acquire the Texas property.

In December 2002, the California federal court issued a final judgment that established a "constructive trust" claim to the Texas property in favor of Respondent. In 2003 and 2004 Respondent enforced the

California federal judgment against the Texas property owners David and Carol Price in separate federal court proceedings filed in the United States District Court for the Northern District of Texas. David Price was a party to the California litigation. Carol Price was not.

In 2005, Evans filed suit in Dallas County, Texas against Long Beach to quiet title to the property against Long Beach and to cancel its lien interest in the real property. In 2007, the Dallas state district court gave Full, Faith and Credit to the California federal court judgment and granted a final judgment in favor of Respondent quieting title and canceling Long Beach's lien. App. A.

The Fifth Court of Appeals at Dallas affirmed the trial court and specifically noted that it would not address whether the Local Action Doctrine applied to the California litigation.[1] *Long Beach Mortgage Co. v. Evans*, 2009 Tex. App. LEXIS 1603 (Tex. App. – Dallas, 2009, pet. denied); App. A. The Texas Supreme Court denied the Petition for Review filed by Petitioner. *Long Beach Mortgage Co. v. Evans*, 2010 Tex. LEXIS 67 (Tex. 2010); App. C.

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[1] *See* App A, p. 11 at footnote 5: "... Since we have concluded that the receiver complied with 28 U.S.C. § 754 and that both he and the California federal court had jurisdiction over the Marquette Property, we need not address issues related to the Local Action Doctrine raised by Long Beach." *Long Beach Mortgage Co. v. Evans* 2009 Tex. App. LEXIS at 1603.

REASONS FOR GRANTING THE PETITION

I. Texas Appellate Courts and Federal Circuits are in conflict regarding an important jurisdictional requirement Congress created to allow jurisdiction to be exercised by a Receiver or Court in an S.E.C. enforcement action. 28 U.S.C. § 754 sets out specific, mandatory steps to enable a Receiver to extend a Courts jurisdiction to other states and districts in which property may be found. This Court should grant review to establish with certainty the effect on jurisdiction established solely under § 754 of the timely filing of notice of temporary appointment of a Receiver followed by the untimely filing of notice of permanent appointment, a situation that the statutory language does not address.

A. 28 U.S.C. § 754 Was Not Complied With And Its Language Requires Strict Compliance

The sole basis of the California District court's (and the Receiver's) jurisdiction over the real property at issue here was the combination of two federal statutes, 28 U.S.C. § 754 and 28 U.S.C. § 1692. The Receiver failed to comply with the clear language of § 754 by not timely filing his permanent appointment in Texas, where the property at issue was located.

Courts construing and applying the § 754 filing requirements have never addressed the situation in which notice of a Receiver of temporary appointment was timely filed, but notice of a subsequent permanent appointment was not. Such a situation is presented here and the statute is unclear about how it should be applied in this situation.

Several Federal Circuits have developed jurisprudence applying 28 U.S.C. § 754 that at least implies, if not requires, that notice of a later, permanent appointment of a Receiver has a separate 10-day filing requirement *and* that jurisdiction established by the timely filing of notice of a temporary appointment lapses if notice of a subsequent permanent appointment is not timely filed. The Texas Courts below disagreed in this case (App. A, B, C) thus establishing a conflict regarding the application of and the procedure under § 754 that this Court should resolve.

On its face, § 754 provides that a receiver upon appointment and giving bond is vested with complete jurisdiction and control and the right to take possession of property in different federal districts and to sue in any federal district. This statute was passed by Congress to cure the early challenges to a federal receiver's control and a federal court's jurisdiction over real property located in states outside the where the federal court adjudicating the claims to the real property was located. *See, e.g., Texas & Pac. Ry. Co. v. Gay*, 86 Tex. 571, 26 S.W. 599 (Tex. 1894), *aff'd*, 167 U.S.745, 42 L. Ed. 1209 (1897) (Louisiana federal court did not have jurisdiction to take possession of property in Texas).

Section 754 requires that a receiver

> ". . . shall within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district *shall* divest the receiver of jurisdiction and control over all such property in that district."

28 U.S.C. § 754. Then, under 28 U.S.C. § 1692 in a district court where a receiver is appointed involving property in different districts, process may issue and be executed in any such district as if the property is within one district. Only if the requirements of Section 754 are met is the court of appointment's territorial jurisdiction extended under section 1692. *Sec. & Exch. Comm'n v. Ross*, 504 F.3d 1130, 1146 (9th Cir. 2007).

B. The Courts Below Improperly Recognized *In Rem* Jurisdiction Despite A Failure To Comply With The Enabling Statute.

The United States District Court for the Central District of California, Southern Division at Santa Ana Division in which the receivership proceeding was pending appointed a receiver on a temporary basis and later on a permanent basis. The Section 754 filing of the notice of temporary appointment was timely. The notice of permanent appointment was not, however, filed within the 10-day period required by the statute.

The precise issue presented here has not been directly addressed by any Federal Circuit Court of Appeals. Specifically, the question is whether the filing of a notice of permanent appointment of a receiver as required by 28 U.S.C. § 754 must be within the 10-day period the statute requires when a timely filed notice of temporary appointment exists. The reasoning that has been applied by the 9th and D.C. Circuits to issues arising from the untimely filing of the notice and pleadings is consistent with premise that the appointment of a permanent receiver immediately supersedes the temporary appointment and must be filed within the 10-day period § 754 requires.

First, the language of the statute does not mention or implicitly contemplate that a timely filed temporary appointment effectively permits the "hold over" exercise of *in rem* jurisdiction after a permanent appointment is made but before it is filed.

In *Sec. Exch. Comm'n v. American Capital Investments, Inc.*, 98 F.3d 1133 (9th Cir. 1996), the Court specifically held that appointment of a permanent receiver required the timely filing of a notice pursuant to § 754. In that case, the receiver was temporarily appointed on September 2, 1993, and the order of temporary appointment was signed on September 10. The order of permanent appointment was entered on September 23 and the receiver made the § 754 filings on September 27. *Id.* at 1143. The Appellants argued that the 10-day period ran from the temporary appointment date and that the receiver lost jurisdiction over the property by not filing the required notices within that period. The Receiver contended that the 10-day period ran from the date of *permanent* appointment. *Id.*

The Court did not reach the question of whether the filing period ran from the temporary or permanent appointment. It held, instead that permanent appointment started a new 10-day period, *Id.*, relying on *Sec. Exch. Comm'n. v. Vision Communications Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996). That new 10-day period ran from the entry of the order of permanent appointment.[2] The Court's

[2] The *American Capital* court also noted that there had been no attempt to show prejudice from the late filing of the temporary appointment, dicta that demonstrates the improper engrafting of a harm analysis on what is clearly mandatory statutory language. *See, e.g., Sec. Exch. Comm'n v. Equity Service Co.*, 632 F.2d 1092, 1095 (3rd Cir. 1980) (receiver allowed to reassume jurisdiction after a late § 754 filing when no prejudice to other claimants); *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984).

position in *American Capital, supra*, is correct. In *Vision Communications*, 74 F.3d at 287, the receiver filed his § 754 documents two months after his appointment. *Id.* at 290. Rejecting the contention that the receiver's late filing could establish jurisdiction retroactively, the D.C. Circuit held that jurisdiction had been divested 10 days after the order of appointment was signed. *Id.* at 291. The Court went on the note that a re-appointment of the receiver was necessary to start the 10-day filing period over again, thus supporting the view, and Long Beach's position, that the permanent appointment of the receiver in this case required a second filing that happened almost two months too late, thus divesting the receiver of jurisdiction over the real estate in question, and requiring, as in *Vision Communications*, a re-appointment.

The decision of the Court of Appeals in Dallas, Texas, directly conflicts with these Federal Courts of Appeal. The Court failed to acknowledge that the permanent appointment required a new filing of the permanent receivership order and it, in essence, acknowledged a retroactive creation of jurisdiction over the residence in question in direct conflict with the D.C. Circuit's holding in *Vision Communications*.

In short, the Texas Courts have interpreted a federal statute in direct conflict with two Federal Circuits. Because the conflict involves jurisdictional questions, this Court should settle the question. Because a court's jurisdiction is the very basis of a court's power to act, statutes conferring or modifying courts' jurisdiction, particularly involving fundamental principles of *in rem* jurisdiction should be strictly construed. Where statutory language is ambiguous or subject to differing interpretations or applications, any such conflict should be clarified and harmonized to provide a degree of certainty upon which actions can be based.

II. The Courts Below Should Have Determined Whether Respondent's Action Tried in California Was Local or Transitory. If the Action Was Local Then the Courts Should Have Determined Whether the Local Action Doctrine Applied.

This Court has recognized that states where real property is located have exclusive jurisdiction where title to real property is at issue. *Durfee v. Duke*, 375 U.S. 106, 115, 84 S. Ct. 242, 11 L. Ed. 2d 186 (1963) (courts of one State are completely without jurisdiction directly to affect title to land in other States); *Underwriters Nat. Assur. Co. v. North Carolina Life and Acc. and Health Ins. Guaranty Ass'n*, 455 U.S. 691, 706 n.11, 102 S. Ct. 1357, 71 L. Ed. 2d 558 (1982) (exclusive jurisdiction each State has to control the administration of real property within its borders).

The Local Action Doctrine holds that an action to recover title or the possession of land is a "local action" that can only be brought in the state where the property lies. *Ellenwood*, 158 U.S, at 105; *Morris v. Missouri R*, Co., 78 Tex. 17, 14 S.W. 228 (Tex. 1890). The doctrine is a matter of subject matter jurisdiction. *Hayes v. Gulf Oil Corporation*, 821 F.2d 285, 291 (5th Cir. 1987); *Livingston v. Jefferson*, 15 F. Cas. 660, F. Cas. No. 8411 (C.C. D. Va. 1811).

The *Long Beach* opinion is serious and pervasive because the title claim asserted by Respondent in the California litigation would have otherwise been governed by the Local Action Doctrine and was not permissible under Texas law.

First, in Texas, a constructive trust suit that seeks equitable title to real property can only be brought in the county where the property is located. *MacDonald v. Follett*, 142 Tex. 616, 180 S.W.2d 334 (Tex. 1944); *In re Wells Fargo Home Mortg.*, 2009 Tex. App. LEXIS 69 (Tex. App. - Corpus Christi 2009, no pet.); TEX. CIV. PRAC. & REM. CODE § 15.011 (Vernon 2002).

Second, the Texas lis pendens statute that allows for notice of litigation to be filed in the county where the real property is located applies only to *direct* interests being asserted in real property, not to *collateral* interests. *Flores v. Haberman*, 915 S.W. 2d 477 (Tex. 1995); TEX. PROP. CODE § 12.007(a) (Vernon Supp. 2009). In *Flores*, the Texas Supreme Court held that the lis pendens filed in a constructive trust suit to trace converted funds used to purchase real property was an action *collateral* to the property because the claim was being used to trap the real estate during the litigation in order to satisfy a judgment. See also, Roberts, *The Propriety of a Lis Pendens in Constructive Trust Cases*, 38 Seton Hall L. Rev. 213, 242 (2008)(Texas law does not allow a lis pendens to be used in a constructive trust claim that involves the tracing of funds.)

Respondent argued that his lis pendens was valid within the meaning of *Flores* because he sought to acquire title to the Texas property so that he could transfer it and that that the Local Action Doctrine no longer applied in light of 28 U.S.C. § 754.

But by admitting that he sought title to the property, Respondent validated that he sought a *direct* interest in the property and the proper use of the lis pendens statute. In doing so, he also necessarily admitted that the action was local in nature.

Respondent's constructive trust suit in California was permissible only if it was a transitory cause of action. *Keller v. Millice*, 838 F. Supp. 1163 (S.D. Tex. 1993). A transitory cause of action, where one seeks to establish an interest in real property, is not a title dispute and is permitted to be adjudicated in courts outside the State where the real property is located because the court has a basis for in personum jurisdiction over the defendant. *Massie v.* Watts, 10 U.S. 148, 159, 6 Cranch 148, 3 L. Ed 181 (1810) For example, in *FTC v. Neiswonger*, 2009 U.S. Dist. LEXIS 83937 (E.D. Mo. 2009) a federal court in Missouri ordered the non-party spouse, under the possibility of contempt, to transfer marketable title to real property located in Nevada. Title to the property was not at issue in that case. But note that in *Sleeping Child LLC v. Lewis and Clark Capital LLC*, 2008 Mont. Dist. LEXIS 492 (2009) a state district judge issued an opinion that original jurisdiction over an action to quiet title was in the Montana state courts where the property was located and not in the California federal receivership. The court noted that the federal receiver submitted to jurisdiction in Montana by filing an interest of record against the real property at issue.

Based on the foregoing arguments it was error to give Full, Faith and Credit to the California federal court judgment. U.S. CONT. art. IV §1. As noted in a recent law review article, *in rem* judgments are *not* necessarily entitled to Full Faith and Credit:

> Full faith and credit applies to valid and final in personain judgments rendered in American courts. It applies to both legal and equitable decisions but generally does not apply to in rem

> judgments for real property . . . courts generally lack jurisdiction to adjudicate claims to real property outside the forum. Thus, any real property judgment needing extraterritorial enforcement will be invalid for lack of jurisdiction. Judgments regarding title to real property have no interstate effect, for two reasons — if the land is located in F-1, there will be no need to enforce it elsewhere, and F-1 lacks jurisdiction to adjudicate claims to land elsewhere. See, e.g,, *Fall v. Eastin*, 215 U.S. 1 (1909) (holding that Nebraska is not required to recognize Washington state divorce court's determination of land title in Nebraska); *McElreath* v. *McElreath*, 345 S.W2d 722 (Tex. 1961); cf. *Durfee* v. *Duke*, 375 U.S. 106 (1963). This is further explained by the exception to full faith and credit, which does not require recognition of an F-1 judgment adjudicating something over which F-2 had exclusive control.

George, *Enforcing Judgments Across State and National Boundaries: Inbound Foreign Judgments and Outbound Texas Judgments*, 50 S. Tex. L. Rev. 399 (2009).

III. By Refusing to Examine Whether the Local Action Doctrine Applies to Actions Brought by Federal Receivers under 28 U.S.C. § 754, the Texas and Federal Courts Have Engaged in Implied Preemption of the Local Action Doctrine.

Implied preemption only occurs when Congress sufficiently evidences its intent to exclusively occupy the field and when the state law conflicts with the federal law by making simultaneous compliance impossible or by creating an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Crosby v. Nat'l Foreign Trade Council*, 580 U.S. 363, 872, 120 S. Ct. 2288, 147 L. Ed. 2d 352 (2000).

Long Beach has not found any case law or specific congressional intent to preempt the Local Action Doctrine by reason of 28 U.S.C. § 754 and 1692. As Section 754 requires that he file his appointment papers in the federal district where the property is located, this requirement itself suggests that in certain cases suit should be filed where the property is located. The receiver's window to file his appointment papers — only ten days is narrow. This indicates that Congress did not intend to allow properties to be tied up indefinitely in federal receivership proceedings who fail to assert jurisdiction over receivership property. Section 754 provides that a receiver "shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title [28 USCS § 959]." This suggests that Congress intended for the receiver to litigate in forums outside where he was located. Congress has also been sensitive

to title disputes in other contexts. In eminent domain actions Congress provided that such proceedings be brought in the district where the district where the property is located. 28 U.S.C. § 1403.

If the Respondent had followed Texas law and the Local Action Doctrine, he would have adjudicated this suit in one proceeding in Texas. Instead, he filed four successive lawsuits to adjudicate his title claim. The first suit was in California: *Case No. SACV 01-819, Evans v. Garro, United States District Court, Central District of California, Southern Division at Santa Ana.* The next two were separate suits against the property owners in the Northern District of Texas: *Case No. 3:03-MC-00022-M, Evans v. Garro, United States District Court, Northern District of Texas, Dallas Division; Case No. 3-03MCO22-M, Evans v. Garro, United States District Court, Northern District of Texas, Dallas Division.* The fourth suit was the action to quiet title proceeding below filed against Petitioner. (App. B). Congress could not have intended such an inefficiency.

Texas law, the Local Action Doctrine and the federal receiver statutes under Sections 754 and 1692 do not conflict, but work in harmony with each other. There certainly is no clear statutory intent to always give a federal receiver a home court advantage to litigate nor was there intent to override over 100 years of land title litigation involving the Local Action Doctrine simply because a federal receiver has been appointed.

CONCLUSION

For the foregoing reasons, a petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS DATED MARCH 6, 2009

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

No. 05-07-00435-CV

LONG BEACH MORTGAGE COMPANY,

Appellant

v.

ROBB EVANS, AS RECEIVER FOR TLC AMERICA, INC.,

Appellee

March 6, 2009, Opinion Issued

JUDGES: Before Justices Bridges, Francis, and Whittington.[1] Opinion By Justice Bridges.

OPINION BY: DAVID L. BRIDGES

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1. The Honorable Mark Whittington, Justice, Court of Appeals, Fifth District of Texas at Dallas, retired, sitting by assignment. This appeal was submitted to the panel before Justice Whittington retired on December 31, 2008.

Appendix A

OPINION

Opinion By Justice Bridges

This case involves competing interests in residential property located in Texas. Long Beach Mortgage Company appeals from a summary judgment. In three issues, Long Beach challenges the trial court's grant of Robb Evans's motion for summary judgment, the denial of Long Beach's motion for summary judgment, and the award of attorneys' fees to Evans. We affirm the judgment of the trial court.

Background

In 2000, the Securities and Exchange Commission brought suit in California against TLC America, Inc. and related business entities and individuals for federal securities laws violations with regard to the misuse and diversion of over $ 28 million in investor funds ("SEC Litigation"). In the SEC Litigation, the California federal court appointed Robb Evans as temporary receiver, giving Evans the "full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises . . . of TLC." The order also authorized Evans "to hav access to and to collect and to take custody . . . of all assets . . . of TLC" and "to take such action as is necessary and appropriate to preserve . . . any assets of TLC." Evans then filed his initial order of appointment and the complaint from the SEC Litigation in the United States District Court for the Northern District of Texas. The court in the SEC

Litigation later entered an order appointing Evans as the permanent receiver of TLC America.

After his appointment, Evans brought suit in the United States District Court for the Central District of California against multiple defendants, including Durham Capital Group, Inc. and David Price, the president of Durham, to recover TLC America's property (the "Garro Litigation").[2] Evans asserted claims of fraud, conversion, negligence and breach of fiduciary duty in the Garro Litigation. Evans also sought the imposition of a constructive trust on property purchased with funds stolen from TLC America.

In the Garro Litigation, Evans alleged that over $2.5 million of TLC America's funds had been wired into a Durham Capital Group, Inc. bank account controlled by David Price and his former wife, Carol Miller Price. During the course of the Garro Litigation, Evans discovered that over $ 1 million of the funds transferred into the Durham account were diverted into an account separately maintained by Carol Miller Price. Carol Miller Price then used this money to purchase a personal residence in Texas, the Marquette Property, in October 1999. Upon discovering that TLC America's funds had been used to purchase the Marquette Property, Evans filed a notice of lis pendens on July 23,

2. The Garro Litigation is styled and numbered *Robb Evans, as Receiver for TLC America, Inc. v. James F. Garro, et al.*, Case No. 01-6466, in the United States District Court for the Central District of California.

2002. The notice was recorded in Dallas County, Texas on July 24, 2002.

Also on July 24, 2002, David Price and Carol Miller Price borrowed $ 400,000 from Long Beach through a home equity loan. A deed of trust on the Marquette Property secured this loan. On August 2, 2002, Long Beach filed its deed of trust in Dallas County, Texas, creating a lien on the Marquette Property. The Prices ultimately defaulted on their loan with Long Beach.

In December 2002, the California federal court in the Garro Litigation found David Price and Durham Capital jointly and severally liable to Evans, as receiver for TLC America, in the amount of $3,505,001.59. The federal court also imposed a constructive trust over the Marquette Property.

After the constructive trust was imposed in the Garro Litigation, Evans petitioned the court in the SEC Litigation for permission to sell the Marquette Property. The court in the SEC Litigation granted Evans permission to sell the Marquette Property "free and clear of all liens and interests therein, with such liens and interests to attach to the net proceeds of sale." The court further ordered that "the sale proceeds shall be held in trust by [Evans] pending resolution of all disputes concerning distribution of the sale proceeds and any claimed interests in the [Marquette Property.]" The court further ordered David Price, Carol Miller Price, Long Beach, and any other third-party claimant to file a claim with the court within sixty days if they

intended to assert an interest in the sale proceeds. The court authorized Evans to "perform any and all other acts necessary to effectuate the orderly sale of the [Marquette Property.]"

Long Beach did not file a claim in the SEC Litigation pursuant to the court's order. Long Beach contends that it did not file a claim because it was not served with the order providing the sixty-day deadline to assert a claim to the sale proceeds. Consequently, the California federal court did not resolve Long Beach's lien claim, thereby clouding title to the Marquette Property.

Evans registered the judgment imposing the constructive trust for enforcement in the United States District Court for the Northern District of Texas. In 2004, the federal court for the Northern District of Texas divested the Prices of all title and interest to the Marquette Property and vested full fee simple title to the Marquette Property in Evans.

Evans has filed this lawsuit against Long Beach in state district court to resolve Long Beach and Evans's competing claims (i.e. Evans's lis pendens and Long Beach's deed of trust) to the Marquette Property. The parties filed traditional cross-motions for summary judgment. The trial court granted summary judgment in favor of Evans and denied Long Beach's motion. The court entered a final judgment in favor of Evans, which declares his lis pendens valid and effective with respect to the Marquette Property and superior to Long Beach's deed of trust lien claim. The judgment further

declares Long Beach's deed of trust claim invalid and of no force and effect with respect to the Marquette Property and quiets title to the Marquette Property in Evans. The final judgment also authorizes Evans to sell the Marquette Property and awards Evans his attorneys' fees.

The trial court denied Long Beach's motion for new trial and this appeal ensued.

Discussion

Standard of Review

The standards for reviewing a summary judgment are well established. The party moving for summary judgment has the burden of showing no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *See* Tex. R. Civ. P. 166a(c); *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). In deciding whether a disputed material fact issue exists, precluding summary judgment, evidence favorable to the non-movant will be taken as true. *Nixon*, 690 S.W.2d at 548-49. Further, every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor. *Id.* When both parties move for summary judgment, each party bears the burden of establishing that it is entitled to judgment as a matter of law. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 356 (Tex. 2000). We review the summary judgment evidence presented by both parties and determine all questions presented. *Id.* The reviewing

court should render the judgment that the trial court should have rendered, or remand if neither party has met its summary judgment burden. *Id.*

Issues One And Two

In its first and second issues, Long Beach contends the trial court improperly granted Evans's motion for summary judgment and denied its motion. Within these issues, Long Beach contends: (1) the California federal court and Evans lacked *in rem* jurisdiction over the Marquette Property; (2) the lis pendens was ineffective because it evidences collateral issues; (3) "the interplay between the local action doctrine and collateral issues" are problematic; (4) the pleadings in the Garro Litigation do not support lis pendens in Texas; and (5) the lis pendens did not provide it with constructive notice.

1. Long Beach's First and Third Arguments-Whether Evans And The California Federal Court Had Jurisdiction

With regard to its first and third arguments, Long Beach contends that the California federal court and Evans lacked *in rem* jurisdiction over the Marquette Property because Evans failed to file the complaint and order of appointment within ten days as required by 28 U.S.C. § 754. A receiver achieves jurisdiction and control of property in districts other than that of appointment by following the requirements of 28 U.S.C.

§ 754. *See U.S. v. Arizona Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984). Section 754 provides, in pertinent part, as follows:

> A receiver, appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.
>
> . . .
>
> Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which the property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

28 U.S.C. § 754.

The record before us reflects Evans was appointed temporary receiver in the SEC Litigation by order dated October 4, 2000. This order and the accompanying complaint were filed in the United States District Court for the Northern District of Texas nine days later, on October 13, 2000. The California federal court then appointed Evans as permanent receiver on November

1, 2000, but the order was not forwarded to the Northern District of Texas until December 20, 2000 and was not stamped "received" by the clerk of the Northern District of Texas until January 2, 2001.

Relying on the Local Rules for the Central District of California, Long Beach contends that because Evans's temporary receivership expired before he was permanently appointed and because he failed to file his order of permanent appointment within ten days of the order, both he and the federal court lacked jurisdiction over the property.[3] Other than bare citations to the local rules, Long Beach offers no argument, supported by authority, for this proposition. Moreover, the California federal court continued its jurisdiction over the case to resolution. In the absence of authority which mandates the receiver is divested of jurisdiction for his purported failure to comply with the local rules, we will not conclude that the local rules divested Evans and by

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3. These rules provide, in pertinent part, as follows:

> 25.2 **Temporary Receiver-Term of Appointment.** A temporary receiver shall not be appointed for a period longer than the next Motion Day following the expiration of twenty (20) days after the date of appointment.
>
> 7.2 **Motion Days.** Each Monday, commencing at 10:00 a.m., shall be "Motion Day" on which motions will be heard . . . .

extension, the California federal court, of jurisdiction over the Marquette Property.[4]

Further, section 754 does not specify or require that both the temporary and permanent appointment orders be filed within ten days for the receiver to maintain jurisdiction. Instead, section 754 only states "within ten days after the entry of his order of appointment," the order should be filed in the district court for each district in which the property is located. *See* 28 U.S.C. § 754. Long Beach has not cited us to any authority, and we have found none, which mandates that the ten-day requirement be fulfilled after both the temporary and permanent appointments of receivership for Evans to maintain jurisdiction over the property at issue. *See S.E.C. v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1142-43 (9th Cir. 1996) (stating no case addresses whether the 10-day period of § 754 commences after a temporary appointment or only upon a permanent appointment), *abrogated on other grounds by Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998). We conclude Evans's filing of the order of appointment as temporary receiver and complaint within the ten-day period

4. Long Beach also argues that the order appointing Evans as temporary receiver expired by its own terms on October 16, 2000 and divested Evans of jurisdiction. However, the October 4 order which appointed Evans temporary receiver also contained, among other orders, a temporary restraining order. The October 4 order only reflects expiration of the TRO on October 16, 2000, not the expiration of Evans's receivership status.

established Evans's jurisdiction over the Marquette Property. *See* 28 U.S.C. § 754. Furthermore, Evans was not required to file his appointment of permanent receivership within the ten-day period in order to maintain the jurisdiction already established by his timely filing of the order of appointment as temporary receiver and accompanying pleading. *See id.* We conclude Evans complied with section 754 and both he and the California federal court had jurisdiction over the Marquette Property.[5]

2. Long Beach's Fourth Argument-Whether The Pleadings Support The Lis Pendens

In its fourth argument, Long Beach asserts the lis pendens was ineffective because the pleadings in the Garro Litigation do not support the lis pendens. Long Beach also contends the lis pendens is ineffective because the Marquette Property is not specifically identified on the face of the Garro Litigation pleading. Section 12.007 *of the property code* provides a lis pendens must state: (1) the style and number, if any, of the proceeding; (2) the court in which the proceeding is

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5. Long Beach also argues the Local Action Doctrine applies to this case. The Local Action Doctrine provides that a local action must be brought in the state where the property is located. *See Hayes v. Gulf Oil Corp.*, 821 F.2d 285, 287 (5th Cir. 1987) (tracing history of local action doctrine). Since we have concluded the receiver complied with 28 U.S.C. § 754 and that both he and the California federal court had jurisdiction over the Marquette Property, we need not address issues related to the Local Action Doctrine raised by Long Beach.

pending; (3) the names of the parties; (4) the kind of proceeding; and (5) a description of the property affected. The lis pendens before us provides the statutory requirements.[6] TEX. PROP. CODE ANN. § 12.007 (Vernon 2004). The lis pendens notice in this case provides:

> **NOTICE IS HEREBY GIVEN** that Case No., 01-6466, styled ROBB EVANS, as Receiver for TLC America, Inc., Plaintiff v. James F. Garro, an individual; David Price, an individual; . . . Durham Capital Group, Inc., a Nevada corporation; . . . Defendants; was commenced in the United States District Court for the Central District of California on July 27, 2001 and is now pending in such court.

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6. Long Beach also contends the pleading in the Garro Litigation was not sufficient to support Evans's lis pendens notice because the cause number listed on the lis pendens did not match the cause number on the first amended petition filed in the Garro Litigation. The record reflects the cause number in the Garro Litigation changed when the case was transferred to another division of the California federal courts. Long Beach contends Evans did not file a lis pendens referencing the suit brought in the new cause number and, therefore, the lis pendens did not provide proper notice. However, Long Beach raises this argument for the first time on appeal. The argument is, therefore, waived and we need not address it. *State Bd. of Ins. v. Westland Film Indus.*, 705 S.W.2d 695, 696 (Tex. 1986); *Collins v. City of Corpus Christi*, 188 S.W.3d 415, 423 (Tex. App.—Corpus Christi 2006, no pet.).

Appendix A

> The action seeks to establish an interest or a right in real property situated in Dallas County, Texas, and described as follows:
>
> **7843 Marquette Street, Dallas, Texas 75225-4400**
>
> **Caruth Village Phase 2**
>
> **Blk R/54 50 LT 10**
>
> **VOL 9920 9/62 10 DD 102399 CO-DALLAS**
>
> The action is fraud and deceit; aiding and abetting; conversion; money had and received; negligence; breach of fiduciary duty; and constructive fraud . . . .

(emphasis in original).

We agree that Evans does not specifically reference the Marquette Property in the first amended complaint of the Garro Litigation even though he does specifically refer to other properties. In the first amended complaint, Evans uses a "catch-all" phrase to request the court to (1) declare "any other purchases or investments made with TLC's funds [be held] in a constructive trust for the benefit of TLC," (2) declare "TLC the owner . . . of any other purchases or investments made with TLC's funds" and (3) order a conveyance to TLC of "any other purchases or

investments made with TLC's funds." Evans argues this catch-all phrase encompasses the Marquette Property. Long Beach has not cited us to any case authority requiring the pleading to specifically identify the property listed in the lis pendens and, after an extensive search, we too have found no case which mandates the specific identification of the property in a pleading to support the lis pendens. Without such authority, we decline to overturn the judgment on that basis.[7]

3. Long Beach's Second Argument-Whether The Lis Pendens Evidences Collateral Issues

Long Beach also argues the relief sought in the Garro Litigation only collaterally involved the Marquette Property so it cannot support the lis pendens. In support of this proposition, Long Beach directs us to section 12.007 of the Texas Property Code.

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7. Long Beach also contends that lis pendens was not proper because Carol Miller Price was not a party to the Garro Litigation, and "nothing in the summary judgment record supports the relief sought by Evans with respect to the property interest vested in Carol Price . . . ." However, Carol Miller Price never had a valid claim to the Marquette Property since the California federal court found money diverted from TLC was used to purchase the Marquette Property. *See Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905, 908 (Tex. App.—Houston [1st Dist.] 1988, no pet.) (a constructive trust is awarded when it is unconscientious for the holder of legal title to retain and enjoy the beneficial interest in real property). Furthermore, the Northern District of Texas completely divested both Carol Miller Price and David Price of any alleged interest in the Marquette Property and vested such interest in Evans.

Section 12.007 provides that "during the pendency of an action involving title to real property, the *establishment of an interest in real property*, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending." TEX. PROP. CODE ANN. § 12.007 (Vernon 2004) (emphasis added). The lis pendens statute gives litigants a method to constructively notify anyone taking an interest in real property that a claim is being litigated against the property. *In re Collins*, 172 S.W.3d 287, 292 (Tex. App.—Fort Worth 2005, orig. proceeding); *Garza v. Pope*, 949 S.W.2d 7, 8 (Tex. App.—San Antonio 1997, orig. proceeding). A recorded lis pendens is notice to the world of its contents regardless of whether service has been made on the parties to the proceeding. *See* TEX. PROP. CODE ANN. § 13.004 (Vernon 2004). To satisfy section 12.007, the suit on which the lis pendens is based must claim a direct interest in real property, not a collateral one. *In re Collins*, 172 S.W.3d at 293.; In re Wolf, 65 S.W.3d 804, 805 (Tex. App.—Beaumont 2002, orig. proceeding). In other words, the property against which the lis pendens is filed must be the subject matter of the underlying lawsuit. *In re Fitzmaurice*, 141 S.W.3d 802, 805 (Tex. App.—Beaumont 2004, orig. proceeding); *In re Wolf*, 65 S.W.3d at 806 (both stating an "adequate nexus" must exist between the claim and the subject property).

Long Beach contends that Evans's request for title in the Garro Litigation was only a "plea for relief

requested" and merely collateral. We disagree. To determine the validity of a lis pendens on appeal, this Court must look to appellee's pleadings to determine whether the suit sought to establish an interest in the real property involved, entitling Evans to file a lis pendens. *First Nat. Petroleum Corp. v. Lloyd*, 908 S.W.2d 23, 25 (Tex. App.—Houston [1st Dist.] 1995, no pet.); *Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905, 907 (Tex. App.—Houston [1st Dist.] 1988, no pet.). The first amended complaint in the Garro Litigation states that Price and Durham Capital, among others, held real property purchased with TLC's funds in a constructive trust for the benefit of TLC. In addition, the pleading states, "Garro and Price spent millions of dollars of the funds they retained on travel, living expenses, and the purchase of luxury homes. In so doing, Defendants wrongfully detained funds belonging to TLC and spent those funds for their own personal benefit." In his prayer for relief for fraud and deceit, Evans asked the California federal court "to convey to TLC" any purchases made with TLC's funds. Following the allegations that TLC's funds were converted for the purchase of real property, Evans requested the court to (1) declare "any other purchases or investments made with TLC's funds [be held] in a constructive trust for the benefit of TLC," (2) declare "TLC the owner . . . of any other purchases or investments made with TLC's funds," and (3) order a conveyance to TLC of "any other purchases or investments made with TLC's funds."

Where the pleadings seek a constructive trust for property and pray that an interest be granted in that

property, the notice of lis pendens against that property is valid. *Lloyd*, 908 S.W.2d at 24-25. Because Evans seeks a constructive trust to obtain a conveyance of an interest in real property, and not merely an interest in the proceeds, the request for a constructive trust seeks a direct interest in real property. *Cf. Moss v. Tennant*, 722 S.W.2d 762, 763 (Tex. App.—Houston [14th Dist. 1986, no pet.) (pleading that a lien be imposed against property was essentially a prayer for a judgment lien, affecting the property only collaterally, and did not support lis pendens). *See also Teve*, 763 S.W.2d at 908 (distinguishing *Moss* and concluding the lis pendens was proper due to the prayer for a constructive trust and an interest in the property in the underlying pleadings). Thus, Evans's notice of lis pendens against the Marquette Property is valid. *Lloyd*, 908 S.W.2d at 25; Teve, 763 S.W.2d at 908-09.

4. Long Beach's Fifth Argument-Whether The Lis Pendens Provided Constructive Notice

Long Beach next contends the record does not reflect that the lis pendens was recorded prior to the effective date of Long Beach's lien. Thus, Long Beach argues the lis pendens did not provide the necessary constructive notice prior to the effective date of Long Beach's lien on the Marquette Property. Long Beach further asserts that absent proof that Evans's lis pendens was recorded prior to the effective date of Long Beach's security instrument, Long Beach is entitled to summary judgment or, alternatively, fact issues exist which preclude summary judgment in favor of Evans.

Although the record reflects the lis pendens was recorded on July 24, 2002, the same date Long Beach's deed of trust was executed, the record also reflects the lis pendens was filed on July 23, 2002. "An instrument filed with a county clerk for recording is considered recorded from the time that the instrument is filed." TEX. LOCAL GOV'T CODE ANN. § 191.003 (Vernon 2008). A notice of lis pendens is effective from the time it is filed or, in this case, July 23, 2002. *See* TEX. PROP. CODE ANN. § 13.004 (Vernon 2004). Thus, Evans's lis pendens was filed and deemed recorded prior to the date Long Beach executed its deed of trust on July 24, 2002 or filed the deed of trust on August 2, 2002. Thus, the record establishes that Evans's lis pendens was recorded prior to the effective date of Long Beach's security instrument. Long Beach's lien claim is, therefore, subordinate to Evans's lis pendens as a matter of law. *See Countrywide Home Loans, Inc. v. Howard*, 240 S.W.3d 1, 4 (Tex. App.—Austin 2007, no pet.).

Still, Long Beach argues lis pendens provides constructive notice only upon recording and proper indexing. Long Beach asserts that "obviously, it was indexed sometime after it was recorded",[8] so there was no constructive notice given prior to the time of execution of Long Beach's deed of trust. However, we have already concluded that the filing of the lis pendens was sufficient to place Long Beach on notice of Evans's interest in the Marquette Property. *See* TEX. PROP. CODE ANN. § 13.004 (Vernon 2004). There is no

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8. The record before us does not include a copy of the index.

provision in section 13.004 which requires the index to be made as a condition precedent to the validity of the notice. *See Pope v. Beauchamp*, 206 S.W. 928, 931 (Tex. 1918) (discussing a predecessor to section 13.004 and concluding it was unnecessary for one to show that the lis pendens was indexed in order to render the notice of lis pendens effective).

Thus, the summary judgment evidence demonstrates that there is no genuine issue of material fact precluding summary judgment in favor of Evans. We overrule Long Beach's first and second issues.

Issue Three

In its third issue, Long Beach challenges the award of attorneys' fees to Evans. Long Beach contends the trial court improperly awarded fees under the Declaratory Judgment Act when, in fact, Evans's lawsuit was one to quiet title and fees are not permitted in suits to quiet title. *See Southwest Guar. Trust Co. v. Hardy Rd. 13.4 Joint Venture*, 981 S.W.2d 951, 952-53 (Tex. App.—Houston [1st Dist.] 1998, pet. denied) (attorney's fees not available in suit to quiet title or to remove cloud on title).

Although we agree with Long Beach that Evans's pleading describes the claim as a cloud on title, Long Beach failed to raise this issue before the trial court. Issues a non-movant contends avoid the movant's entitlement to summary judgment must be expressly presented by written answer to the motion or by other

written response to the motion. *McConnell v. Southside Indep. School Dist.*, 858 S.W.2d 337, 341 (Tex. 1993); see also TEX. R. APP. P. 33.1 (To preserve a complaint for appellate review, a party must have presented its complaint to the trial court "by a timely request, objection, or motion that . . . stated the grounds for the ruling that the complaining party sought . . . with sufficient specificity to make the trial court aware of the complaint.") We cannot reverse a trial court's judgment based on an issue not presented to the trial court. *Westland*, 705 S.W.2d at 696. Thus, we overrule Long Beach's third issue.

We affirm the judgment of the trial court.

DAVID L. BRIDGES

JUSTICE

APPENDIX B — FINAL JUDGMENT OF THE DISTRICT COURT OF DALLAS COUNTY, TEXAS, 44TH JUDICIAL DISTRICT DATED JANUARY 22, 2007

IN THE DISTRICT COURT
OF DALLAS COUNTY, TEXAS

CAUSE NO. 05-05219-B

ROBB EVANS, AS RECEIVER FOR
TLC AMERICA, INC.,

Plaintiff,

v.

LONG BEACH MORTGAGE COMPANY,

Defendant.

FINAL JUDGMENT

On this day came to be heard Plaintiff Robb Evans, as Receiver for TLC America, Inc.'s ("Plaintiff") Motion for Summary Judgment and Brief in Support ("Plaintiff's Motion") seeking judgment against Defendant Long Beach Mortgage Company ("Defendant"). The Court also heard Defendant's Motion for Summary Judgment ("Defendant's Motion"). Plaintiff and Defendant appeared by and through their attorneys of record and announced ready for trial. The Court determined it had jurisdiction over the subject matter and the parties to this proceeding.

Appendix B

The Court, having considered Plaintiff's Motion, the summary judgment evidence submitted by the parties, argument of counsel, and applicable law, finds that Plaintiff's Motion should be, and is in all things, **GRANTED.** The Court, having considered Defendant's Motion, the summary judgment evidence submitted by the parties, argument of counsel, and applicable law, the Court finds that Defendant's Motion should be, and is in all things, **DENIED.** The Court finds that there are no genuine issues of material fact and that Plaintiff is entitled to a judgment against Defendant as a matter of law. It is, therefore,

ORDERED that Plaintiff Robb Evans, as Receiver for TLC America, Inc.'s Motion for Summary Judgment and Brief in Support is hereby **GRANTED**. It is further

ORDERED that Defendant Long Beach Mortgage Company's Motion for Summary Judgment is hereby **DENIED.** It is further

ORDERED that Plaintiff Robb Evans, as Receiver for TLC America, Inc.'s Notice of Lis Pendens, filed on July 23, 2002 and recorded on July 24, 2002 in Volume 2002 143, Pages 03654 – 03656 of the Real Property Records of Dallas County, Texas, is valid and effective with respect to the real property located in Dallas County, Texas and described as 7843 Marquette Street, Dallas, Texas 75225-4400, Caruth Village, Phase 2, Blk R/5450 LT 10, VOL 99209/6210 DD 102399 CO-DALLAS (the "Marquette Property"). It is further

Appendix B

ORDERED that Plaintiff Robb Evans, as Receiver for TLC America, Inc.'s Notice of Lis Pendens, filed on July 23, 2002 and recorded on July 24, 2002 in Volume 2002 143, Pages 03654 – 03656 of the Real Property Records of Dallas County, Texas, is superior to Defendant Long Beach Mortgage Company's Texas Home Equity Security Instrument, dated July 24, 2002, signed by David H. Price and Wife, Carol M. Price, as grantor, and Troy Gotschall as trustee, and Long Beach Mortgage Company, A Corporation, as beneficiary, and filed and recorded on August 2, 2002 in Volume 2002 150, Pages 06097-06109 of the Real Property Records of Dallas County, Texas, with respect to the Marquette Property. It is further

ORDERED that Defendant Long Beach Mortgage Company's Texas Home Equity Security Instrument, dated July 24, 2002, signed by David H. Price and Wife, Carol M. Price, as grantor, and Troy Gotschall as trustee, and Long Beach Mortgage Company, A Corporation, as beneficiary, and filed and recorded on August 2, 2002 in Volume 2002 150, Pages 06097-06109 of the Real Property Records of Dallas County, Texas, is invalid and of no force or effect with respect to the Marquette Property. It is further

ORDERED that all title and interest to the Marquette Property, more fully described as 7843 Marquette Street, Dallas, Texas 75225-4400, Caruth Village, Phase 2, Blk RI5450 LT 10, VOL 99209/6210 DD 102399 CO-DALLAS, is hereby quieted in Plaintiff Robb Evans, as Receiver for TLC America, Inc. It is further

ORDERED that all title and interest to the Marquette Property, more fully described as 7843 Marquette Street, Dallas, Texas 75225-4400, Caruth Village, Phase 2, Blk R/5450 LT 10, VOL 99209/6210 DD 102399 CO-DALLAS, is fully vested in Plaintiff Robb Evans, as Receiver for TLC America, Inc. It is further

ORDERED that Plaintiff Robb Evans, as Receiver for TLC America, Inc. is hereby authorized to immediately sell the Marquette Property, more fully described as 7843 Marquette Street, Dallas, Texas 75225-4400, Caruth Village, Phase 2, Blk R/5450 LT 10, VOL 99209/6210 DD 102399 CO-DALLAS. It is further

ORDERED that Plaintiff Robb Evans, as Receiver for TLC America, Inc. have and recover judgment against Defendant Long Beach Mortgage Company for its reasonable and necessary attorneys' fees and expenses that are equitable and just in the amount of $41,071.00, for which let execution issue. It is further

ORDERED that Plaintiff Robb Evans, as Receiver for TLC America, Inc. have and recover judgment against Defendant Long Beach Mortgage Company for additional reasonable attorneys' fees in the following principal amounts: $15,000.00 in the event a motion for new trial is filed and denied; $25,000.00 in the event of an unsuccessful appeal to the Court of Appeals; an additional $25,000.00 in the event a petition for review is filed with the Texas Supreme Court and denied; and an additional $10,000.00 in the event the petition for

review is granted by the Texas Supreme Court, or briefs on the merits are requested, and the judgment is upheld, for which let execution issue. It is further

ORDERED that all costs of court are taxed against Defendant Long Beach Mortgage Company, for which let execution issue. It is further

ORDERED that Plaintiff Robb Evans, as Receiver for TLC America, Inc. shall have and recover from Defendant Long Beach Mortgage Company post-judgment interest on all amounts awarded herein at the rate of 8.25% per annum from the date of this judgment until paid in full, plus all additional costs of this action, for all of which let execution issue. It is further

ORDERED that Plaintiff Robb Evans, as Receiver for TLC America, Inc. shall have all writs and other process necessary to enforce this judgment. It is further

ORDERED that this Judgment is intended to be **FINAL** for purposes of appeal. This Judgment disposes of all parties to this action and all claims. All relief requested by any party to this action not expressly granted herein is **DENIED**.

Signed this 22nd day of January, 2007.

s/ Carlos R. Cortez
THE HONORABLE CARLOS CORTEZ

APPENDIX C — ORDER OF THE SUPREME COURT OF TEXAS DENYING PETITION FOR REHEARING DATED JANUARY 15, 2010

SUPREME COURT OF TEXAS

09-0630

LONG BEACH MORTGAGE COMPANY

v.

ROBB EVANS, AS RECEIVER FOR TLC AMERICA, INC.

January 15, 2010, Order Pronounced

OPINION

MOTIONS FOR REHEARING OF THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED.